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September 21, 2017

BY ECF:

Honorable Valerie E. Caproni
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

Re: United States v. Percoco, et al., S2 16 Cr. 776 (VEC)

Dear Judge Caproni:

We represent defendant Peter Galbraith Kelly, Jr., in the above-captioned action, and we respectfully write in response to the Court's September 20, 2017 Order. (Doc. No. 320). The S2 Indictment does not address any of the deficiencies identified in Mr. Kelly's pretrial motions. Accordingly, we do not intend to withdraw those motions.

Moreover, we do not seek to supplement any of Mr. Kelly's pretrial motions, except to note that the "repeat and reallege" paragraphs of the counts in the S2 Indictment—including the new counts—continue to incorporate by reference allegations that are plainly irrelevant and prejudicial to Mr. Kelly, as discussed in the pending motion to strike prejudicial surplusage. (Doc. Nos. 234, 291). For example, in addition to the examples already described in our motion papers and despite the Government's admission that Mr. Kelly and the Syracuse Defendants "did not share a common plan or scheme," (Doc. No. 264, at 94), Counts Seventeen and Eighteen of the S2 Indictment, which charge the Syracuse Defendants with making false statements about the Syracuse Bribery Scheme, incorporate allegations pertaining to Mr. Kelly and the Energy Company Bribery Scheme. (See S2 Ind. ¶¶ 72, 74 (realleging, among others, ¶¶ 1, 12, 20–21, 28–32, 36)). Such prejudicial surplusage should be struck from the S2 Indictment.

Respectfully submitted,

/s/ Daniel M. Gitner

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CC:

All Counsel (Via ECF)